CONTRACTS—LEGALITY OF A CONTRACT TO RAISE A BID AT AN AUCTION SALE.—Defendant agreed that if the plaintiff would raise the bid on certain land put up at auction from $10,250 to $11,275 he would give the plaintiff one half of the raised bids. Plaintiff raised the bid to $11,275. The land was knocked down to the plaintiff for $11,830. Plaintiff brings this action to recover one half of the difference between $11,275 and $11,830. *Held,* as plaintiff had broken the contract by selling the bid, he could not recover. *Jennings* v. *Jennings* (N. C., 1921), 108 S. E. 340.

The usual definition of a puffer is the one given in *Peck* v. *List,* 23 W. Va. 338, where it is said that a puffer is "one who, without having any intention to purchase, is employed by the vendor at an auction to raise the price by fictitious bids, thereby increasing competition among bidders, while he himself is secured from risk by a secret understanding with the vendor that he shall not be bound by his bids." The plaintiff in the principal case made the bid with the intention of buying. This, however, should not prevent the plaintiff from being regarded as a puffer, if the bid was made because of the inducement held out to him by the vendor, since the implied warranty to the public that the price would not be screwed up by secret machinery was broken. Whether the employment of a puffer by the vendor at an auction sale is a fraud or not is in conflict. A majority of the courts in this country hold that the use of a puffer, when no reservations are made, is a fraud upon the public, because the purchaser at such a sale is entitled to buy at an under value if he can do so, and that such a contrivance by way of puffing deprives him of this right. *Peck* v. *List, supra;* 131 A. S. R. 488, and cases there cited. The minority opinion is that the vendor may employ one puffer if he does it for the purpose of preventing a sale at a sacrifice and not as a mere pretext for enhancing the price above the true value. *Reynolds* v. *Dechaums,* 24 Tex. 174; *Davis* v. *Petway,* 3 Head (Tenn.) 667. This conflict in the American decisions is due to the different rules which were applied by the courts of equity and of law in England. See 131 A. S. R. 488. The agreement in the principal case was a fraud, according to the majority rule, as a matter of law; while according to the minority rule it was a question for the jury to say whether or not the agreement was to prevent a sacrifice of the property put up. In both jurisdictions, however, if a fraud had been worked upon the public the plaintiff could not recover a share of the raised bids, because the contract, being for the purpose of defrauding the purchaser and against public policy, was illegal and unenforceable. *Dealey* v. *East San Mateo Land Co.,* 21 Cal. App. 39; *Walker* v. *Nightingale,* 3 Bro. P. C. 263. The conclusion at which the court in the principal case arrived seems sound; but the plaintiff might have been denied relief on the ground that he was a puffer, and as such could not recover on the contract.

CONTRACTS—MUTUAL ASSENT—EFFECT OF AN UNDERSTANDING THAT AN ORAL AGREEMENT IS TO BE REDUCED TO WRITING.—Through their respective brokers, the plaintiff and defendant entered into an oral agreement for the chartering of plaintiff's vessel. The defendant refused to execute a formal

charter party or to charter the ship, and plaintiff sued for damages resulting from such refusal. *Held,* an enforceable contract had been entered into by the parties, though both intended it should be reduced to writing and signed *American Hawaiian S. S. Co.* v. *Willfuehr et al.* (1921), 274 Fed. 214.

"It is everywhere agreed to be possible for parties to enter into a binding informal or oral agreement to execute a written contract. It is also everywhere agreed that if the parties contemplate a reduction to writing of their agreement before it can be considered complete there is no contract until the writing is signed." WILLISTON ON CONTRACTS, Sec. 28. Between these two clear situations ambiguous ones arise which lead to differences of opinion. The ultimate question in such cases, however, is one of fact as to the intention of the parties. If the written draft is viewed simply as a convenient record of an existing agreement, its absence does not affect the binding force of the agreement, there being no regulation by statutes; but if it is viewed as an essential part of, and a consummation of, the negotiations, there is no contract until the written draft is executed. *Miss., etc., Steamship Co.* v. *Swift,* 86 Me. 248; *Western Roofing Tile Co.* v. *Jones,* 26 Okla. 209; *El Reno Wholesale Grocery Co.* v. *Stocking,* 293 Ill. 494; *Prince* v. *Blisard* (Texas, 1919), 210 S. W. 301. See 29 L. R. A. 431 *et seq.* In some cases the fact that the parties contemplated that a formal agreement should be prepared and signed has been regarded as "some evidence" that they did not intend to bind themselves until the agreement was reduced to writing and signed; in others it has been considered "strong evidence" of such a conclusion. *Wharton* v. *Stoutenburgh,* 35 N. J. Eq. 266; *Rossiter* v. *Miller* [1878], 3 App. Cas. 1124; *Ridgway* v. *Wharton,* 6 H. of L. Cas. 264. See 29 L. R. A. 437; Ann. Cas. 1912 B 131. In the principal case, and similar ones, where an enforceable contract has been held to have been made without the execution of the formal contract, it is at least impliedly recognized that the mere reference to such future formal contract does not negative the existence of a present contract. The court in the principal case considered that the plaintiff had shown an intention on the part of the parties to be bound by the oral agreement, and had sustained the burden of proof said to be upon him to sustain such a contention, particular notice being given to the fact that the defendant's manager had actually designated a place for the ship to dock.

CONTRACTS—ORAL VARIATION OF WRITTEN AGREEMENT WITHIN STATUTE OF FRAUDS—ESTOPPEL.—In a written agreement defendant promised to sell plaintiff a certain 480 acres of patented land, and, *inter alia,* to sell plaintiff 100 head of cattle to be selected by plaintiff out of defendant's herd. Plaintiff paid $500 down. A day or two after the execution of the agreement, and nearly a month before defendant was to perform, he discovered that he could not pass a clear title to a part of the land. Accordingly, the parties entered into an oral adjustment as to this. While defendant was holding the cattle to be ready to perform he had opportunities to sell them. Before the date of performance a severe drought occurred, causing him heavy losses on his animals. On the date of performance plaintiff refused to complete pay-